

18-614 & 18-992

TAX TYPE: INCOME TAX

TAX YEAR: 2014 & 2016

DATE SIGNED: 4/10/2019

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL

EXCUSED: L. WALTERS

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 AND TAXPAYER-2,</p> <p>Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 18-614</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2016</p> <p>Judge: Marshall</p>
<p>TAXPAYER-1 AND TAXPAYER-2,</p> <p>Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 18-992</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2014</p> <p>Judge: Marshall</p>

Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYERS, Turbo Tax
TAXPAYER-1
TAXPAYER-2

For Respondent: RESPONDENT, Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on November 14, 2018 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioners (“Taxpayers”) are appealing the Respondent’s (“Division”) audit of their individual income tax returns for the 2014 and 2016 tax years. For the 2014 tax year, the Division assessed audit tax of \$\$\$\$ and interest of

***** through March 31, 2018. For the 2016 tax year, the Division assessed audit tax of ***** and interest of ***** through March 31, 2018. Interest continues to accrue on any unpaid balance.

APPLICABLE LAW

Under Utah Code Ann. §59-10-104(1), tax is imposed on the state taxable income of a resident individual.

The term “state taxable income” is defined in Utah Code Ann. §59-10-103(1)(w), below in pertinent part:

- (i) subject to Section 59-10-1404.5, for a resident individual, means the resident individual’s adjusted gross income after making the:
 - (A) additions and subtractions required by Section 59-10-114; and
 - (B) adjustments required by Section 59-10-115...

“Resident individual” is defined in Utah Code Ann. §59-10-103(1)(q), as follows:

- (i) “resident individual” means:
 - (A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or
 - (B) an individual who is not domiciled in this state but:
 - (I) maintains a place of abode in this state; and
 - (II) spends in the aggregate 183 or more days of the taxable year in this state.

The factors considered for determination of domicile are addressed in Utah Code Ann. §59-10-136, as set forth below:

- (1) (a) An individual is considered to have domicile in this state if:
 - (i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or
 - (ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.
- (b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:
 - (i) is the noncustodial parent of a dependent:
 - (A) with respect to whom the individual claims a personal exemption on the individual's federal individual income tax return; and
 - (B) who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; and
 - (ii) is divorced from the custodial parent of the dependent described in Subsection (1)(b)(i).

- (2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:
 - (a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence;
 - (b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration; or
 - (c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.
- (3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if:
 - (i) the individual or the individual's spouse has a permanent home in this state to which the individual or the individual's spouse intends to return after being absent; and
 - (ii) the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state, not for a special or temporary purpose, but with the intent of making a permanent home.
- (b) The determination of whether an individual is considered to have domicile in this state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into consideration the totality of the following facts and circumstances:
 - (i) whether the individual or the individual's spouse has a driver license in this state;
 - (ii) whether a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state;
 - (iii) the nature and quality of the living accommodations that the individual or the individual's spouse has in this state as compared to another state;
 - (iv) the presence in this state of a spouse or dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return;
 - (v) the physical location in which earned income as defined in Section 32(c)(2), Internal Revenue Code, is earned by the individual or the individual's spouse;
 - (vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;
 - (vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;
 - (viii) whether the individual or the individual's spouse lists an address in

- this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;
 - (ix) whether the individual or the individual's spouse lists an address in this state on a state or federal tax return;
 - (x) whether the individual or the individual's spouse asserts residency in this state on a document, other than an individual income tax return filed under this chapter, filed with or provided to a court or other governmental entity;
 - (xi) the failure of an individual or the individual's spouse to obtain a permit or license normally required of a resident of the state for which the individual or the individual's spouse asserts to have domicile; or
 - (xii) whether the individual is an individual described in Subsection (1)(b).
- (4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of this Subsection (4), an individual is not considered to have domicile in this state if the individual meets the following qualifications:
- (i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's spouse are absent from the state for at least 761 consecutive days; and
 - (ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the individual's spouse:
 - (A) return to this state for more than 30 days in a calendar year;
 - (B) claim a personal exemption on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b);
 - (C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;
 - (D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or
 - (E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.
- (b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered to have domicile in this state by filing an individual income tax return in this state as a resident individual.
- (c) For purposes of Subsection (4)(a), an absence from the state:
- (i) begins on the later of the date:
 - (A) the individual leaves this state; or
 - (B) the individual's spouse leaves this state; and

- (ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.
- (d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:
 - (i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and
 - (ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.
- (e)
 - (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual income tax return or amended individual income tax return under Subsection (4)(d) shall pay any applicable penalty imposed under Section 59-1-401.
 - (ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return or amended individual income tax return under this chapter:
 - (A) files the individual income tax return or amended individual income tax return within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state; and
 - (B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax due on the return, any interest imposed under Section 59-1-402, and any applicable penalty imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or (5).
- (5) (a) If an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state.
- (b) For purposes of this section, an individual is not considered to have a spouse if:
 - (i) the individual is legally separated or divorced from the spouse; or
 - (ii) the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year.
- (c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.
- (6) For purposes of this section, whether or not an individual or the individual's spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the residential property that is the primary residence of a tenant

of the individual or the individual's spouse may not be considered in determining domicile in this state.

Under Utah Code Ann. §59-1-1417(1), the burden of proof is generally upon the petitioner in proceedings before the commission, as follows:

- (1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following in which the burden of proof is on the commission:
 - (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
 - (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
 - (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income;
 - (i) required to be reported; and
 - (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.

DISCUSSION

On March 1, 2018, the Division issued Notices of Deficiency and Audit Change to Taxpayers for their individual income tax returns for the 2014 and 2016 tax years. It is the Division's position that the Taxpayers were domiciled in Utah during the years at issue. For the 2014 tax year, the Division changed the return type from a non/part-year resident to a full-year resident, reduced the Utah adjusted gross income from \$\$\$\$\$ to \$\$\$\$\$, calculated tax liability on a total adjusted gross income of \$\$\$\$\$, and allowed a credit for taxes paid to another state in the amount of \$\$\$\$\$. For the 2016 tax year, the Division changed the return type from a non/part-year resident to a full-year resident, reduced the Utah adjusted gross income from \$\$\$\$\$ to \$\$\$\$\$, calculated tax liability on a total adjusted gross income of \$\$\$\$\$, and allowed a credit for taxes paid to another state in the amount of \$\$\$\$\$.

Prior to the years at issue, the Taxpayers were residents of Utah. They owned a home in CITY-1, they were registered to vote in Utah, their vehicles were registered in Utah, and their children attended school in Utah. TAXPAYER-1 was offered new employment, and in August 2014, the Taxpayers moved to STATE-1. The Taxpayers maintain they intended to remain in STATE-1 indefinitely, but the contract under which TAXPAYER-1 was employed ended

unexpectedly. It is the Taxpayers' contention that for the years at issue, they were part-year residents of Utah.

The Taxpayers sold their CITY-1 home on September 11, 2014. They rented a comparably sized single family home in CITY-2. They rented the home in CITY-2 from August 1, 2014 through July 22, 2016. When the Taxpayers returned to Utah in July 2016, they stayed with family while they searched for a new home. The Taxpayers purchased a new home in CITY-3 on August 18, 2016.

The Taxpayers' school-aged children attended elementary school in CITY-4, STATE-1 during the years during the audit period. TAXPAYER-2 obtained a STATE-1 driver license in August 2015. Upon returning to Utah in 2016, TAXPAYER-2 obtained a new Utah driver license. TAXPAYER-1 retained his Utah driver license throughout the audit period. The Taxpayers registered their vehicles in STATE-1 in August 2014 and August 2015. The Taxpayers' vehicles were registered in Utah for the years prior and after. Taxpayers attended church in STATE-1 from August 2014 through July 2016. Taxpayers were also involved with Boy Scouts of America from September 2014 through July 2016.

The Taxpayers retained their voter registration in Utah during the years at issue. The Taxpayers acknowledged they did not register to vote in STATE-1, nor did the Taxpayers ask to have their names removed from the voter register in Utah.

TAXPAYER-1 stated that they do not meet the standards of Subsection (4) of Utah Code Ann. §59-10-136 because they were not absent from the State of Utah for more than 761 days.

TAXPAYER-1 stated that his understanding is that the Division's position is that he and his wife are domiciled in Utah because they were registered to vote in Utah. TAXPAYER-1 stated that while he was preparing for the hearing, he found proposed legislation that would change Utah Code Ann. §59-10-136 to require actual voting, not just being registered to vote. He argued that this shows an intent for the statute to require actual voting, not just being registered to vote in the state.

REPRESENTATIVE FOR TAXPAYERS added that he reviewed the prior Commission decision referenced in the Division's answer. He argued that the cases are distinguishable because in the case referenced by the Division, the taxpayers continued to own a home in Utah, whereas these Taxpayers did not.

The Division's representative stated that there is no dispute as to the facts outlined by the Taxpayers in their domicile survey. He stated that the Division has based its domicile determination on the Taxpayers' voter registration. The Division provided information showing that TAXPAYER-1 registered to vote in Utah in November 2002 and again in August 2016.

TAXPAYER-2 registered to vote in April 2004 and again in October 2016. The Division's representative noted that TAXPAYER-1 voting history shows a gap in voting between October 2014 and November 2016. TAXPAYER-2 voting history shows the last time she voted was in 2013. The Division provided a copy of the County's record showing that TAXPAYER-1 status was changed from active to inactive on October 13, 2014 because the County received returned mail. It also shows that a confirmation notice was sent to TAXPAYER-1 in September 2015. However, the County never removed TAXPAYER-1 from the voting record. TAXPAYER-1 stated that he does not recall receiving a confirmation card from the County.

The Division's representative stated that for the 2014 tax year, the credit for taxes paid to STATE-1 was less than the total amount of tax paid to STATE-1. He explained that under the statute there is a limit on the credit. The Division's representative stated the STATE-1 portion of the income was divided by the federal adjusted gross income, that percentage was multiplied by the Utah tax to determine the limit on credit for taxes paid to another state.

The Legislature enacted domicile legislation that became effective beginning with the 2012 tax year. Utah Code Ann. §59-10-136 addresses when an individual is considered to have domicile in Utah. As of the date of the hearing, there was proposed legislation that would change Utah Code Ann. §59-10-136. The provisions of S.B. 13 (2019 General Session)¹ changed Utah Code Ann. §59-10-136 by deleting voter registration as creating a rebuttable presumption of domicile, and changing the rebuttable presumption to: "votes in this state...in a regular general election, municipal election, primary election, or special election during the taxable year; and has not registered to vote in another state in that taxable year." The bill takes effect on the constitutional effective date of May 14, 2019. However, the legislation is quite clear as to the years for which it is to be applicable, "[t]axable years beginning on or after January 1, 2018." It is therefore clear from the text of S.B. 13 that the Legislature advisedly chose to change the rebuttable presumption to actual voting, but to make that change starting in the 2018 tax year.

Subsection (4) of Utah Code Ann. §59-10-136 provides that an individual is not considered to have domicile in the State of Utah if certain qualifications are met. The Taxpayers do not meet the qualifications of Subsection (4), as they were not absent from the state for at least 761 days.

The Taxpayers are considered to be each other's spouse for the years at issue. Utah Code Ann. §59-10-136(5)(a) provides that if an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state. Subsection (5)(b) provides that an individual is not considered to have a spouse if the individual

¹ Signed by the Governor on March 26, 2019.

is legally separated or divorced from the spouse, or the individual and individual's spouse claim married filing separate filing status for purposes of filing a federal individual income tax return for the year in question. The Taxpayers submitted federal returns with a married filing joint filing status for the tax years at issue. There was no evidence or testimony presented at the hearing that the Taxpayers were legally separated or divorced during the audit period. Thus if either TAXPAYER-1 or TAXPAYER-2 is considered to have domicile in Utah under Utah Code Ann. §59-10-136, the other is also considered to have domicile in this state.

The Division argued the Taxpayers are domiciled in Utah because they were registered to vote in Utah. Utah Code Ann. §59-10-136(2)(b) provides as follows:

There is a rebuttable presumption that an individual is considered to have domicile in this state if:

- (b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration...

The Legislature, by including voter registration as a rebuttable presumption, intended for there to be circumstances where an individual who is registered to vote in Utah is considered to have domicile in Utah, but also for there to be circumstances where an individual who is registered to vote in Utah is not considered to have domicile in Utah. The Legislature has not provided guidance on what is or is not sufficient to rebut the presumption in Utah Code Ann. §59-10-136(2)(b). The Division provided information showing that both Taxpayers were registered to vote in Utah. The Commission found in Appeal No. 15-720² that not voting in Utah despite being registered to do so is not sufficient to rebut the presumption. The Commission reasoned that had the Legislature intended actual voting in Utah to be the event that triggered domicile in Utah, it easily could have stated so in the statute. The Taxpayers acknowledge they did not register to vote in STATE-1, nor that they had asked to have their names removed from the voter registration in Utah. The Taxpayers have not rebutted the presumption of domicile based on being registered to vote in Utah, and thus are domiciled in Utah.

Jan Marshall
Administrative Law Judge

² Prior Commission decisions are available online at tax.utah.gov/commission-office/decisions.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's audit assessment of tax and interest for the years at issue. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner

Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.